

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
Case No. 5:15-CV-156-BO**

RALEIGH WAKE CITIZENS ASSOCIATION,)
INC, JANNET B. BARNES, BEVERLEY S.)
CLARK, WILLIAM B. CLIFFORD, BRIAN)
FITZSIMMONS, GREG FLYNN, DUSTIN)
MATTHEW INGALLS, AMY T. LEE, ERWIN)
PORTMAN, SUSAN PORTMAN, JANE C.)
ROGERS, BARBARA D. VANDENBERGH, JOHN)
G. VANDENBERGH, AMY WOMBLE, and)
PERRY WOODS,)

Plaintiffs,)

v.)

CHAD BAREFOOT, in his official capacity as)
Senator and Primary Sponsor of Senate Bill 181,)
PHILIP E. BERGER, in his official capacity as)
President Pro Tempore of the North Carolina Senate,)
TIM MOORE, in his official capacity as Speaker of)
the North Carolina House of Representatives; and)
THE WAKE COUNTY BOARD OF ELECTIONS,)

Defendants.)

DEFENDANT'S MOTION TO
EXTEND TIME TO ANSWER OR
OTHERWISE RESPOND TO
AMENDED COMPLAINT

**MOTION TO EXTEND TIME TO ANSWER OR OTHERWISE RESPOND TO
AMENDED COMPLAINT**

Defendant Wake County Board of Elections, by and through counsel and pursuant to Rule 6(b) of the Federal Rules of Civil Procedure, moves the Court for an order extending the time within which Defendant may serve its Answer or other responses to Plaintiffs' Amended Complaint to and including August 3, 2015. In support of this motion, Defendant shows the Court the following:

1. On April 9, 2015, Plaintiffs filed the Complaint in this case.

2. On April 29, 2015, Defendant Wake County Board of Elections executed a waiver of service of process.

3. On June 5, 2015, Plaintiffs filed and served an Amended Complaint.

4. The time for responding to Plaintiffs' Amended Complaint has not yet expired for Defendant Wake County Board of Elections.

5. Two of the three claims set forth in the Amended Complaint are the same or substantially similar to those filed in another case before this court, *Wright v. North Carolina*, No. 5:13-CV-607-BO. Specifically, this case involves the same electoral districts examined in *Wright* and raises similar claims under the Equal Protection Clause of the Fourteenth Amendment relating to those districts.

6. On March 17, 2014, this Court granted the Wake County Board of Elections' Motion to Dismiss in *Wright et al. v. State of North Carolina*. 975 F. Supp. 2d 539 (E.D.N.C. 2014), dismissing as nonjusticiable claims that are substantially similar to those raised in this case.

7. On May 27, 2015, in a 2-1 decision, a panel of the Court of Appeals for the Fourth Circuit reversed in part this Court's order granting the motion to dismiss. *Wright*, ___ F.3d ___, 2015 U.S. App. LEXIS 8731 (4th Cir. 2015).

8. On June 10, 2015, the Wake County Board of Elections filed a petition for rehearing en banc, asking the Fourth Circuit to reconsider the justiciability of the claims asserted in *Wright*.

9. Given the similarity of issues presented in this case and *Wright*, a decision on the petition for rehearing en banc in *Wright* will enable Defendant to prepare an appropriate response

to the Amended Complaint in light of the Fourth Circuit's disposition of *Wright* on the petition for rehearing en banc.

10. Accordingly, Defendant Wake County Board of Elections seeks a 45-day extension of time to respond to the Amended Complaint in order to allow time for the disposition of the petition for rehearing in *Wright*.

11. On June 16, 2015, undersigned counsel consulted with counsel for Plaintiffs regarding this request, and counsel for Plaintiffs consents to the extension of time requested.

WHEREFORE, Defendant Wake County Board of Elections requests that the Court enter an order extending the time within which the Wake County Board of Elections may serve its response to Plaintiffs' Amended Complaint to and including August 3, 2015.

This the 17th day of June, 2015.

/s/ Charles F. Marshall
Charles F. Marshall
N.C. State Bar No. 23297
cmarshall@brookspierce.com

Matthew B. Tynan
N.C. State Bar No. 47181
mtynan@brookspierce.com

BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, L.L.P.
1600 Wells Fargo Capitol Center
150 Fayetteville Street
Raleigh, NC 27601
Telephone: (919) 839-0300
Fax: (919) 839-0304

*Attorneys for Defendant Wake County Board of
Elections*

CERTIFICATE OF SERVICE

I hereby certify that on June 17, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and have verified that such filing was sent electronically using the CM/ECF system to the following:

Anita S. Earls
Southern Coalition for Social Justice
1415 West Highway 54, Suite 101
Durham, NC 27707
919-323-3380 x115
Fax: 919-323-3942
Email: anita@southerncoalition.org
Counsel for Plaintiffs

Respectfully Submitted,

/s/ Matthew B. Tynan
Matthew B. Tynan
N.C. State Bar No. 47181
BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, L.L.P.
230 North Elm Street
Suite 2000
Post Office Box 26000
Greensboro, NC 27401
Telephone: (336) 271-3171
Fax: (336) 232-9171
mtynan@brookspierce.com
Attorney for Defendant